IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Misc. Petition No.253/2006.
(Bhanwarlal Vs. State of Rajasthan & Another)

DATE OF ORDER : April 6th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. S.D. Rajpurohit for the petitioner.
Mr. S.K. Vyas, P.P.
Mr. J.S. Choudhary and Mr. Pradeep Choudhary for the non-petitioner No.2.

BY THE COURT :

By this petition, the petitioner has prayed for quashing impugned order and proceedings thereof and further prayed for discharge from the allegations levelled against the petitioner.

According to facts narrated in the petition, upon complaint FIR was registered against the petitioner at police station Makrana filed under Section 156(3), Cr.P.C. by the complainant

Smt. Mamta Kanwar. As per allegations levelled against the petitioner, the said FIR was filed with regard to the incident which had taken place one month before Deepawali of the year 2001. The said FIR was registered against the petitioner on 01.05.2002 upon the complaint filed under Section 156(3), Cr.P.C. before the Addl. Chief Judl. Magistrate, Makrana on 29.04.2002. It is alleged in the FIR by the complainant that she is married to Narendra Singh r/o village Manana. It is alleged that before one month of Deepawali in the year 2001 she went to the agricultural field of petitioner Bhanwarlal because her husband is employed at Bombay and he had instructed her that whenever she was in need of money for home expenses, she could take money from petitioner Bhanwarlal because petitioner Bhanwarlal was very close to her husband. Therefore, it is stated in the FIR that before one month of Deepawali of 2001, she reached to the house of Bhanwarlal situated in the agricultural field at about 3 O'clock. At that time, no female member was in the house, she asked Bhanwarlal for money and it was replied by him that she should come to his room and he would talk to her husband on phone and would give her money also. It is further alleged in the FIR that when she entered into the room, at that time, Bhanwarlal while putting his hand upon

her mouth, hoisted her upon the bed and committed rape upon her. It is further stated that after committing rape he threw a note of Rs.500/-. At that time, that note was thrown back by her and it is further alleged that due to that incident she became pregnant and that too was also got aborted. After the incident, she left the house of Bhanwarlal and again she reached her in-law's house at Manana. Further, it is stated that she never informed anybody in her in-law's house and, on the next day, she went to Gotan at her father's house and there she narrated all the facts before her mother Mangal Kanwar and father Sugan Singh. However, they remained silent out of fear of the society. Now, about after six months, she decided to file the FIR but the police refused to file the FIR and asked the complainant to go to the Court. It is further alleged that due to this reason this delayed FIR has been filed. It is also alleged that petitioner Bhanwarlal is politically sound and he had threatened her that if she informed anybody else then he would ask her husband with regard to the incident and, therefore, due to this fear, the FIR was not immediately filed in the month of November 2001and, after six and a half months, this complaint was filed before the Magistrate under Section 156(3), Cr.P.C. and the same was sent to the police station Makrana for investigation.

It is contended by learned counsel for the petitioner that after thorough investigation the police filed negative final report that the case is totally false. No such indent took place. It is contended by learned counsel for the petitioner that before registering the FIR with regard to the incident on 29.04.2002, on 02.02.2002 a divorce petition was filed by her husband against Mamta on the ground of adultery before the Court of Addl. District Judge, Parbatsar. Therefore, it is obvious that till 29.04.2002 when the complaint was filed by the complainant as per her assertion, it was threatened by the petitioner to her that he will inform her husband about the incident and will get her relations spoiled. According to learned counsel for the petitioner, before filing this FIR, two months before, Narendra Singh filed a complaint on 02.02.2002 in which it was alleged by her husband Narendra Singh as per Annex.-3 placed on record that Mamta is living in adultery. It is also stated in the divorce petition by the husband of the complainant that from 18.12.2001 to 21.01.2002 both complainant and her husband Narendra Singh resided in Bombay and on 09.01.2002 she complained with regard to some abdominal pain and, at that time, in the clinic of Dr. Dalal in Bombay, sonography report was obtained. At that time, as per the divorce petition filed on 02.02.2002, it came to the

knowledge of her husband that complainant was pregnant. In the whole of the divorce petition, husband of the complainant repeatedly alleged that Mamta is living in adultery and it is also stated that Mamta got her pregnancy terminated in the Lagan Shah Hospital at Makrana. He placed on record Annex.-2, certificate of medical termination of the pregnancy dated 28.01.2002. It is also prior to three months of the date of filing of the FIR.

It is further contended by learned counsel for the petitioner that on 13.02.2002, FIR was filed by mamta before the Superintendent of Police copy of which is on record and that FIR was registered at the instruction of the Superintendent of Police at Police Station Gotan. It is contended that in that FIR complainant Smt. Mamta made Narendra Singh, her husband, Ram Chandra, her father-in-law, Geeta Kanwar, mother-in-law, Chatar Singh, brother-in-law (husband's elder brother), Sarita, wife of husband's brother, Hanuman Singh, brother-in-law (husband's elder brother), Smt. Kanta and petitioner Bhanwarlal as accused. In this FIR filed by the complainant on 13.02.2002, no incident with regard to alleged offence of rape having been committed upon her by petitioner Bhanwarlal one month before Deepawali of 2001 was alleged. This FIR was filed for offence

under Section 498A, 406, 323, 315 and 120B, I.P.C. This fact was taken into account by the police in the investigation that if at all the alleged occurrence of rape had taken place one month before Deepawali then definitely it was to be mentioned by the complainant in the FIR Annex.-4 which is filed by the complainant Smt. Mamta Kanwar two months before the FIR dated 29.04.2002 in which allegation of rape was made.

It is vehemently contended by learned counsel for the petitioner that if the allegation was true then of course, at the time of filing this FIR and appearing before the Superintendent of Police, Nagaur, these facts were to be narrated by the complainant before the Superintendent of Police. This aspect of the matter was also taken into account by the police at the time of investigation in the FIR No.149/2002 filed by the complaint dated 29.04.2002. It is also contended by learned counsel for the petitioner that in between the alleged time of incident and 29.04.2002 divorce petition was filed by husband of the complainant against her and on 13.02.2002 upon her complaint filed before the Superintendent of Police, FIR was registered against her husband and all the members of the in-law family as well as petitioner Bhanwarlal. Bare perusal of the FIR reveals that as per reputed member of the society he made efforts for

reconciliation between both parties, therefore, complainant Mamta and her family members were annoyed with him and false FIR is filed in which no date of incident has been mentioned and FIR has been filed with regard to the incident which is six and half months prior to filing of the FIR.

Learned counsel for the petitioner contended that it is material to mention that in between this period complainant herself filed complaint before the Superintendent of Police and upon the instruction of the S.P., Nagaur, FIR was registered at P.S. Gotan. This aspect of the matter was also taken into account by the police during the investigation in connection with the present FIR. It is also vehemently contended by learned counsel for the petitioner that the allegation of Smt. Mamta is also false on the ground that so called pregnancy was removed at the instance of Smt. Mamta at Lagan Shah hospital, Makrana and according to the Medical Termination of the Pregnancy Act, 1971, the pregnancy can be removed with the consent of the patient and the said pregnancy was admittedly removed with her consent as per the investigation report and certificate Annex.-2 dated 28.01.2002 issued by the Lagan Shah Memorial Hospital, Makrana. While inviting attention toward Annex.-2, it is pointed out by learned counsel for the petitioner that there is no

signature of her husband. It is best known to complainant Smt. Mamta that who had put the signature upon the form which is filled in at the time of performing the MTP and who was with her and at whose instance she got removed the pregnancy. It is vehemently contended by learned counsel for the petitioner that Smt. Mamta herself got the pregnancy removed on 28.01.2002 and, thereafter, she filed complaint against her husband and in-laws and the petitioner for offences under Section 498A, 406, 312, 313, 315 and 120B, I.P.C., however, no allegation with regard to rape was levelled in the said FIR and, in the last week of April, on 29.04.2002, the complaint was filed under Section 163 Cr.P.C. upon which the present FIR was registered; meaning thereby, that investigation was rightly conducted by the police in which it was found that allegations against the petitioner are false. It is submitted by learned counsel for the petitioner that even in the FIR Annex.-4 filed under Section 498A, I.P.C. on 13.02.2002 the complainant did not make any iota of mention of any incident of rape. According to him, the police after thorough investigation into the matter found that no case is made out nor any evidence upon which it can be said that any occurrence took place came on record.

As per the main contentions of learned counsel for the

petitioner, following points are urged for consideration :

No date of incident has been mentioned in the FIR.

1. The FIR has been filed after delay of six and a half months of the alleged occurrence on 29.04.2002 before the Magistrate under Section 156(3), Cr.P.C.

2. Before filing this FIR, on 12.02.2002 a complaint was filed before the Superintendent of Police, Nagaur with regard to offences under Sections 498A, 406, 312, 313, 315 and 120B, I.P.C. in which all the members of the complainant's in-law family including husband Narendra Singh and the petitioner were impleaded as accused in which no iota of mention as to allegation of rape having been committed upon her by the petitioner was made though that FIR was filed much before the present FIR.

3. Similarly, the complainant had got her pregnancy removed even without consent of her husband, which too, is not disclosed by her.

4. At the time of removing the pregnancy upon the certificate some unknown person put his signature but in the brackets it is mentioned “husband”; meaning thereby, that on 29.04.2002 when the present FIR was filed she was not

pregnant and no allegation was levelled in the earlier FIR, therefore, the whole story of rape is concocted and false. It appears that the pregnancy was got terminated at the end of January 2002 to get disappearance of DNA test for ascertaining paternity and, thereafter, after three months story of rape was concocted and complaint was filed against the petitioner.

5. Narendra Singh, husband of the complainant filed divorce petition on 02.02.2002, i.e., three months prior to the FIR.

It is contended by learned counsel for the petitioner that being a reputed member of the society, the petitioner intervened in the family dispute and efforts were made by him for conciliation in between the parties. The allegations have been levelled against the petitioner to malign his prestige because the petitioner is a political person.

It is contended by learned counsel for the petitioner that all these facts were taken into account by the investigating officer and it is also one of the important facts that the petitioner enjoys high reputation in the area. Earlier, he was elected Pradhan and now he is MLA having secured votes as independent candidate which speaks of his reputation.

It is contended by learned counsel for the petitioner that

assertion of the complainant in the complaint that she remained silent due to prestige is also not acceptable because in the month of February 2002 she filed complaint for offences under Sections 498A, 406, 312, 313, 315 and 120B, I.P.C. against all the members of the in-law family and petitioner because he was exerting for reconciliation. Therefore, in this background it is apparently clear that the whole false implication is to tarnish the political image and reputation of the petitioner by political rivals and the complainant has become tool in their hands and, according to the learned counsel, this is how the impugned FIR has been filed against him.

It is further stated that in this case the police filed negative final report on 16.08.2002 and, thereafter, no protest petition was filed by the complainant for near-about three years, right from 16.08.2002 to 05.03.2005; and, thereafter, the protest petition was filed before the Magistrate and, on 05.03.2005 the learned trial Court proceeded to record statement of the complainant under Section 200, Cr.P.C. Learned counsel for the petitioner vehemently contended that how the protest petition came to be filed after taking 39 adjournments in the case is not only strange in itself but suggestively unravels mystery that some persons are behind the curtain who want to implicate the

petitioner falsely, therefore, the protest petition was filed against the petitioner and the Magistrate proceeded to record statement of the complainant Smt. Mamta under Section 200, Cr.P.C. Obviously, under Section 190, Cr.P.C. cognizance of offence can be taken by the Magistrate upon police report and as and when the Magistrate is deciding to record statements under Section 200, Cr.P.C., in the event of filing of the negative final report, it is obvious that such order is for taking cognizance of offence which has been done in this case. Thereafter statement of the prosecutrix was recorded on 05.03.2005 itself and on 31.03.2005 statements of Sugan Singh, father of the complainant and Smt. Mangal Kanwar, mother of the complainant were recorded and time was sought for producing evidence further; but, on 08.07.2005, they did not want to produce any further evidence and the learned Magistrate fixed the date for hearing arguments upon cognizance though the day on which he had decided to record statement of complainant under Section 200, cognizance was deemed to be taken.

It is further contended by learned counsel for the petitioner that at last after hearing the parties on 21.02.2006 cognizance was taken against the petitioner. It is also very strange that petitioner is near-about 69 years of age and complainant is 25

years old, however, concocting the entire story false allegation of offence under Section 376, I.P.C. has been levelled against the petitioner. As per argument of learned counsel for the petitioner, it is totally false FIR and upon investigation the police submitted negative final report as no offence was made out but, on the basis of statement recorded under Section 200, Cr.P.C. cognizance has been taken and order for issuing process under Section 204, Cr.P.C. is passed which is totally erroneous.

It is argued by learned counsel for the petitioner that in this case after recording statement under Section 202, Cr.P.C., it is the duty of the Court to scan the evidence before issuing process under Section 204, Cr.P.C. He submits that complete process is provided under Chapter XV of the Code of Criminal Procedure and after recording statements the legislature has cast duty upon the Magistrate under Section 203, Cr.P.C. that if after considering statement on oath, if any, of the complainant and of the witnesses and the result of the enquiry or investigation, if any, under Section 202 the Magistrate is required to form his opinion whether there is any ground to proceed and, if yes, then of course he can issue process under Section 204, Cr.P.C. and, if not, then under Section 203 Cr.P.C. while observing that there is no sufficient ground for proceeding he

can dismiss the complaint and, at the time of doing so, he is required to give reasons for so doing in brief. Therefore, as per contention of learned counsel for the petitioner, in this case the learned Magistrate has not applied his mind to Section 203, Cr.P.C. and passed order for issuing process under Section 204, Cr.P.C.

It is further contended by learned counsel for the petitioner while inviting attention towards Section 204 that if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case warrants to summon the accused, in that event, he is required to issue summon or warrant as provided under Section 204, Cr.P.C. vide sub-sections (1), (2), (3), (4) and (5). Therefore, first of all, it is vehemently argued by learned counsel for the petitioner while challenging the order of issuing process under Section 204, Cr.P.C. that the Magistrate has miserably failed to apply mind under Section 203, Cr.P.C. According to him, at that juncture, the Magistrate was to scan the entire evidence but upon perusal of the order impugned it is revealed that at the time of inspection he had made up his mind for issuing process, therefore, he has not scanned or considered the entire reasons given by the investigating officer for giving negative final report in the case.

The investigating officer came to the conclusion that no alleged occurrence took place. Learned counsel for the petitioner while inviting attention towards para 8 contended that as per the finding of the Magistrate for the purpose of issuing process under Section 204, Cr.P.C. there is reason that the petitioner is a politically influential person and investigating officer has tried to protect him from the allegations, therefore, process was issued. Para 8 of the impugned order is re-produced hereunder :

"पत्रावली पर उपलब्ध साक्ष्य में यह प्रथमदृष्ट्या प्रकट होता हैं कि परिवादीया श्रीमति ममता कंवर की ओर से अपने ससुराल पक्ष के विरूद्व पुलिस थाना गोटन में रिपोर्ट दर्ज कराई गई है और परिवादीया व उसके ससुराल पक्ष के बनती नहीं है, इस संबंध में अभियुक्त की और से भी बीचबचाव व समझाने का प्रयास किया जाना प्रकट होता हैं । अनुसंधानधिकारी ने दौराने अनुसंधान जो अभिलेख एकत्रित किये हैं उससे यह प्रकट होता है कि अभियुक्त के विरूद्व पुलिस थाना मकराना में कई सारे मुकदमें दर्ज हुये है । अभियुक्त राजनैतिक एवं प्रभावशाली व्यक्ति भी होना प्रकट होता है । अत: इसी डर की वजह से पीड़िता द्वारा घटना की रिपोर्ट देरी से दर्ज करना स्वभाविक एवं स्पष्ट कारण लगता है । अत: अनुसंधानधिकारी ने एफ0 आर0 दिये जाने के जो कारण वर्णित किये हैं उनसे मैं संतुष्ट नहीं हुँ । अभियुक्त के शपथपत्र व अभियुक्त पक्ष के पारिवारीक सदस्यों की साक्ष्य को एकत्रित किये जाना अपने आप में इस बात को इंगित करता हैं कि अनुसंधानअधिकारी ने अभियुक्त को आरोपों से बचाने का पूर्णया प्रयास किया हैं । पत्रावली पर उपलब्ध साक्ष्य के आधार पर अभियुक्त भँवरलाल राजपुरोहित पुत्र श्री

गोविन्दराम राजपुरोहित निवासी बोरावड के विरूद्व धारा 376 भा०द०सं० के आरोप में आगे कार्यवाही किये जाने के पर्याप्त आधार प्रथमद्रष्टया प्रकट होते हैं । अत: उक्त आरोप अन्तर्गत धारा 376 भा०द०स० में प्रसं न लिया जाता हैं । प्रकरण दर्ज रजिस्टर किया जावें।"

Inviting attention towards para 8, it is stated by learned counsel for the petitioner that at the time of issuing process it was within the mind of the Magistrate that investigating officer is under the influence because the petitioner is a politically influential person. Although in this para he has observed that the complainant has filed FIR against in-laws and there is quarrel in between the complainant and members of in-laws' family including husband and petitioner being influential person made conciliation efforts. It is contended by learned counsel for the petitioner that when these findings are arrived at the reasons for issuing process which is obviously not required to be given have been given by the learned Magistrate which speaks that the learned Magistrate was under the shadow that petitioner is politically influential person, therefore, investigating officer has tried to protect him from the allegations. Learned counsel for the petitioner states that this cannot be ground for issuing process. The learned Magistrate was under obligtation under Section 203, Cr.P.C. to first consider the entire evidence and,

thereafter, he was to form his opinion for issuing process. It is also submitted by learned counsel for the petitioner that the order suffers from illegality and deserves to be set aside.

On the other hand, learned counsel for the complainant Shri J.S. Choudhary vehemently contended that in this case as per statement recorded under Sections 200 and 202, Cr.P.C. and the facts narrated in the FIR there is material on record to arrive at the finding that there is prima facie case against the petitioner for having committed offence under Section 376, I.P.C. It is contended that petitioner is an influential person and against him there are number of cases registered but the police have ignored the number of cases registered against him and under his influence gave FR which is not tenable, therefore, the learned Magistrate has rightly taken cognizance. Inviting attention of the Court towards statements recorded under Section 161, Cr.P.C. and before the Court, it is contended by learned counsel for the complainant that no woman can allege such type of allegation against any person knwoing it well that there is dispute in between her in-laws house and husband. Being a lady, she has come out to fight for herself. Further, it is contended that the factum of removing pregnancy is not disputed by the petitioner which is one of the factors to be considered that a woman who is

under fear of the damage to her reputation she has only this option to get removed her pregnancy. Therefore, on the reasons that the pregnancy was removed by the complainant on 28.01.2002 cannot be a ground for discharging the petitioner. More so, it gave strength to the statement of the prosecutrix that she was carrying a child and got removed the pregnancy at the end of January 2002. It is also contended that the reason for not putting signature of husband is well established that there is a quarrel in between her and her husband, therefore, it cannot be said that allegations with regard to rape by the petitioner is required to be treated as false. The result of rape which is pregnancy was there and it is removed admittedly as per the case of the petitioner also on 28.01.2002. In the life of a woman, it is submitted by learned counsel for the complainant, it is only the worman who can say whose child she is carrying in her womb. If in this case admittedly the husband has filed divorce petition in which allegation of adultery is there and admits that the child did not belong to him, that fact also gives strength to the contention that she was carrying another man's child in her womb. At that juncture, if as a result of the rape committed upon her she became pregnant then it cannot be said that her statement is false. It is also contended by learned

counsel for the petitioner that in this case regular trial is required to be held and truth is required to come out in the trial. Therefore, when the Magistrate found sufficient ground as provided under Section 204, Cr.P.C. to issue process then it cannot be said that the Magistrate was required to scan the evidence as per Section 203, Cr.P.C. It is further contended that as per Chapter XV, in between Section 200 and 202 to 204, Section 203 is there, but, it can apply when the Magistrate comes to the conclusion after perusing the evidence that there is no sufficient ground to proceed then while giving number of facts he can dismiss the complaint. But, in this case, under Section 204, order is passed and in that order also reasons have been given though it is not required. In view of the judgment of the Supreme Court the learned Magistrate gave reasons which cannot be ignored for the purpose of taking cognizance. Learned counsel for the complainant invited attention towards various judgments of the Supreme Court and prayed that this petition under Section 482, Cr.P.C. may be dismissed.

I have perused the entire record of the case as well as judgments cited by learned counsel for the parties.

First of all, it is necessary to mention that according to the prayer of the petitioner he is challenging the order of issuing

process against him under Section 204, Cr.P.C. and prayed for quashing the proceedings in this case, therefore, the question which is required to be decided by this Court is whether at the time of issuing process under Section 204, Cr.P.C. it is necessary to give reasons. In this connection, Section 204, Cr.P.C. may be read. Chapter XVI of the Code of Criminal Procedure provides commencement of proceedings before the Magistrate and the first section is Section 204 which runs as under :

> "**204**. **Issue of process**.-(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -
>
> (a) a summons-case, he shall issue his summons for the attendance of the accused, or
>
> (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.
>
> (2)No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.
>
> (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
>
> (4) When by any law for the time being in force

> any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.
>
> (5) Nothing in this section shall be deemed to affect the provisions of Section 87."

From perusal of the above section it is clear that if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be a summons case or a warrant case then the process is laid down. It is nowhere provided under Section 204 that at the time of issuing process the reasons are required to be given though it is provided under Section 203, Cr.P.C. that in the event of forming opinion that there is no sufficient ground for proceeding the Magistrate is required to give brief reasons for dismissing the complaint. It is true that in this case so many ground were raised by the petitioner and it is vehemently contended that the matter was required to be considered first under Section 203, Cr.P.C. and there is sufficient material produced after investigation by the police that no offence is made out against the petitioner; but, vide the impugned order though the cognizance was taken when the learned Magistrate has decided to proceed to record statement of prosecutrix on 05.03.2005 but, at the time of issuing process on 21.02.2006, it is again

specifically stated that while taking cognizance for offence under Section 376, I.P.C. the case may be registered and petitioner may be summoned through arrest warrant.

It is true that in the FIR no specific date was given by the complainant with regard to alleged offence; likewise, it is also true from the record and finding of the investigating officer that after the alleged incident on 12.02.2002 one FIR was filed by the complainant herself for offences under Sections 498A, 406, 323, 315 and 120B, I.P.C. in which no allegation with regard to commission of offence by the petitioner under Section 376, I.P.C. was levelled. It is also obvious from the facts that complaint with regard to offence under Section 376, I.P.C. was filed on 29.04.2002 before the Magistrate under Section 156(3), Cr.P.C. and the same was sent to the police for investigation by the Magistrate, therefore, for the first time allegation was levelled by the complainant against the petitioner for offence under Section 376, I.P.C. on 29.04.2002. According to the petitioner, thorough investigation was conducted and, thereafter, final negative report was filed before the Court after taking into account all the facts and circumstances of the case. But, fact remains that in the statement recorded under Section 200, Cr.P.C. before the Court and under Section 161, Cr.P.C. by the police, the prosecutrix

levelled allegation against the petitioner with regard to committing rape. Therefore, it was in the mind of the Magistrate at the time of taking cognizance that prosecutrix made allegations with regard to rape though after delay of six and a half months; but, it requires adjudication by the Court.

According to judgments cited by learned counsel for the complainant, reported in AIR 2004 SCW 1342, it has been held by the apex Court that while taking cognizance the Magistrate has only to be satisfied that there is sufficient ground for proceeding and not that there is sufficient ground for conviction. It is further observed that whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused the Magistrate is not required to record reasons. In the said judgment, placing reliance upon the earlier judgment of the Supreme Court in the case of Dy. Chief Controller of Imports and Exports Vs. Rashanlal Agarwal and Others, (2003) 4 SCC 139, their Lordships of the Supreme Court, vide para 10, observed as under :

> "The contention urged is that though the trial Court was directed to consider the entire material on record including the final report before deciding whether the process should be issued against the appellant or not, yet entire material was not considered. From perusal of order passed by the

> Magistrate it cannot be said that the entire material was not taken into consideration. The order passed by the Magistrate taking cognizance is a well written order. The order not only refers to the statements recorded by the police during investigation which led to the filing of final report by the police and the statements of witnesses recorded by the Magistrate under Ss. 200 and 202 of the Code but also sets out with clarity the principles required to be kept in mind at the stage of taking cognizance and reaching a prima facie view. At this stage, the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. The taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons."

In the case of Dy. Chief Controller of Imports and Exports Vs. Rashanlal Agarwal and Others, (2003) 4 SCC 139, vide para 9 of the judgment, the apex Court held as under :

> "In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. <u>At the stage of issuing the process to the</u>

> accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. It was held as follows :
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> The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

It is further contended by learned counsel for the petitioner that as per judgment of the Supreme Court reported in AIR 2003 S.C. 2612, it is held that power under Section 482, Cr.P.C. saves the inherent powers of the High Court and such a power is exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power can, therefore, be exercised to quash the criminal proceedings. Likewise, in the case of State of Haryana Vs. Bhajan Lal, 1992 Supp (1) SCC 335, the apex Court has laid down guidelines in which inherent power under Section 482, Cr.P.C. can be exercised.

Learned counsel for the complainant has invited my attention towards judgment, reported in AIR 2006 S.C. 2214, and prayed that the victim of sexual assault is not treated as accomplice and as such her evidence does not require any other supporting evidence

including evidence of the doctor. Relevant para 13 of the judgment runs as under :

> "It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case, even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour."

Learned counsel for the complainant has also invited my attention towards judgment of this Court, reported in 1978 Cr.L.R. 460, vide para 4, in which it has been held by this Court that whether process should be issued or not under Section 204 is a matter of discretion of the Magistrate and such discretion has to be judiciously exercised. Thus issuing of process on whatever evidence the complainant has produced under Section 202, Cr.P.C. tantamounts sort of discretion that the Magistrate should commit the non-petitioners to stand trial before the Court of Sessions. Another judgment of this Court, referred to

by learned counsel for the complainant is Shanteshwar Prashad Vs. Gayatri Prasad Sharma, reported in 1982 Cr.L.R. (Raj.) 104, in which this Court held that it is the satisfaction of the Magistrate taking cognizance of an offence that there was sufficient ground for proceeding. In case, the Magistrate is satisfied upon the evidence of witnesses that there is sufficient ground for proceeding then the Magistrate is entitled under sub-section (1) of Section 204, Cr.P.C. to issue process. According to the learned counsel, all these judgments speak that at the time of issuing process there is no need to give reasons whatsoever for issuing process, therefore, as per learned counsel for the complainant, in this case process has been issued under Section 204, Cr.P.C. after satisfaction by the Magistrate and, therefore, it does not require any interference.

I am in respectful agreement with the principles laid down by the Hon'ble Supreme Court that at the time of issuing process under Section 204 the Magistrate is not required to give reasons. Of course, if order is passed under Section 203, Cr.P.C. for dismissal of the complaint, the Magistrate is under obligation to give reasons as held by the Hon'ble Supreme Court. In the circumstances, there is no force in the contention of the learned counsel for the petitioner that there was no material against the

petitioner for taking cognizance or issuing process. The grounds taken by the petitioner in this petition may very well be agitated at the stage of framing charge but not at the stage of issuing process under Section 204, Cr.P.C. Similarly, the ground taken by the petitioner that the Magistrate was under obligation to first apply his mind while taking decision under Section 203, Cr.P.C. and upon the material on record there was evidence, therefore, giving reasons the Magistrate should have dropped the proceedings does not hold good for the reasons indicated hereinabove. In my view, though the Magistrate took cognizance after recording statements under Sections 200 and 202 at a very late stage with regard to the incident which allegedly took place in 2001; but, this Court cannot lose sight of the fact that before the investigating officer in her statement recorded under Section 161, Cr.P.C. allegations were levelled by the prosecutrix, thereafter, before the Magistrate also she made the same allegations with regard to the offence having been committed by the petitioner under Section 376, I.P.C. It is also true that the pregnancy which is so created as per allegation of the complainant due to rape committed by the petitioner was removed without taking any consent from the husband of the prosecutrix and she herself got removed the pregnancy in the absence of her

husband and she has not levelled any allegation in the complaint filed by her on 12.02.2002 against her in-laws and petitioner for offences under Sections 498A, 406, 323, 315 and 120B, I.P.C. However, these facts or grounds can be raised by the petitioner at the time of framing charge. These grounds cannot be taken into consideration at the stage for the purpose of quashing the proceedings. In the facts and circumstances of the case, no interference is warranted with the impugned order issuing process against the petitioner.

However, for securing presence of the accused at the stage instead of issuing arrest warrant the Magistrate was required to issue bailable warrant as provided under Section 204, Cr.P.C. while exercising discretion upon the facts of the case.

In this view of the matter, I find no reason to interfere with the order impugned. However, order with regard to issuing arrest warrant is modified and it is ordered that the concerned Magistrate may issue bailable warrant for securing the presence of the petitioner and further petitioner is at liberty to raise all his ground at the time of framing of charge before the trial Court.

Accordingly, this petition is dismissed.

(Gopal Krishan Vyas) J.

In this petition, the petitioner has agitated the ground claiming that he was Pradhan of the Panchayat Samiti and is presently MLA and thus he is actively associated with politics and due to his political reputation, his rivals have set up the complainant to implicate him in false case of rape and thereby tarnish his reputation. Having carefully gone through the material on record as well as allegations in the petition, I do not find there is any foundation as such to plead abuse of the process of court. Merely bald allegation is made in the petition and nothing in substance has been brought before the Court for the inference that the criminal proceedings is aimed at maligning the petitioner and injure his reputation.